NEO TIANG & ANOR

v.

WONG HON MUN

HIGH COURT MALAYA, KUALA LUMPUR
NIK HASHIM J
[CIVIL APPEAL NO: R3-12-156-97]
29 MAY 1998

CIVIL LAW ACT: *Limitation - Proceedings commenced before grant of letters of administration obtained - Whether action statute-barred - Civil Law Act 1956, s. 8(3)(b) - Substitution of administrators of estate of deceased as defendants - When does action begin to commence - Rules of the High Court 1980, O. 15 r. 6A(1) & (3)*

WORDS & PHRASES: *"... not later than six months after his personal representatives took out representation" - Civil Law Act 1956, s. 8(3)(b)*

The plaintiff and the defendant were involved in a motor-cycle accident in July 1979. The defendant passed away in May 1983 and the plaintiff filed his summons and statement of claim against the defendant on 7 December 1983. The personal representatives of the deceased defendant extracted the letters of administration for the deceased's estate on 21 June 1984.

The Sessions Court had given judgment in favour of the plaintiff by finding that the defence of limitation did not apply to the plaintiff's action. The issue before this court was whether the plaintiff's cause of action, which was commenced before the grant of letters of administration, is statute-barred by *virtue* of s. 8(3)(b) of the Civil Law Act 1956 ('the Act').

Held:

[1] By the authority of the case of *Sio Koon Lin & Anor v. SB Mehra*, the administrators of the estate of the deceased were substituted as defendants effective from the date the summons was originally filed and the action would continue as though the substitution had been made from the beginning.

[2] The plaintiff's action was not time-barred as the six-month period in s. 8(3)(b) of the Act had not begun to run against him and hence his action was valid in law. The period prescribed by the said section is a period of limitation. So long as the proceeding is brought against the estate of the deceased person not later than six months after the grant of the letters of administration, the proceeding is not time-barred.

[3] The word 'after' appearing in s. 8(3)(b) should not be read in isolation or given excessive emphasis otherwise it would lead to confusion. The relevant phrase in para. (b) of the section "... not later than six months after his personal representatives took out representation" should be read as such as a whole having regard to the whole provision of s. 8(3).

[4] By *virtue* of O. 15 r. 6A(1) and (3) of the Rules of the High Court 1980, the plaintiff's cause of action, although commenced after the deceased had passed away, may be brought and treated as having been commenced against the deceased defendant's estate whether or not a grant of letters of administration was made before its commencement.

[Appeal dismissed with costs.]

Case(s) referred to:
Airey v. Airey [1958] 2 QB 300 ***(dist)***
Lee Lee Cheng v. Seow Peng Kwang [1960] 26 MLJ 1 ***(cit)***
Rinya Anak Kassi v. Wong Sie King [1970] 2 MLJ 82 ***(dist)***
Sio Koon Lin & Anor v. SB Mehra [1981] 1 MLJ 225 ***(cit)***

Legislation referred to:
Civil Law Act 1956, s. 8(3)(b)
Rules of the High Court 1980, O. 15 r. 6A(l), (3)

For the appellants - Melvin Selvam (Jagjit Singh with him); M/s Jagjit Singh & Co
For the respondent - VS Viswanathan (Teh Poh Lian with him); M/s Teh & Assoc

Reported by Ling Hea Hoon

JUDGMENT

Nik Hashim J:

The only issue for determination in this appeal is whether the plaintiff's/respondent's cause of action which was commenced on 7 December 1983 before the grant of the letters of the administration is statute-barred by virtue of s. 8(3)(b) of the Civil Law Act 1956 ('the Act') which states as follows:

> No proceedings shall be maintainable in respect of a cause of action in tort by virtue of this section has survived against the estate of a deceased person, unless proceedings against him in respect of that cause of action either:
>
> (a) ...
>
> (b) are taken not later than six months after his personal representatives took out representation.

It is not in dispute that the plaintiff and the defendant were involved in motor-cycles accident on 26 July 1979 at Bangi. The defendant died on 25 May 1983. The plaintiff filed his summons and statement of claim on 7 December 1983. The personal representatives of the deceased defendant extracted letters of administration for the deceased's estate on 21 June 1984. By consent of both parties, an order of court was obtained on 1 October 1987 to substitute the administrators of the estate of the deceased defendant as defendants. Thus, by the authority of the Federal Court case of *Sio Koon Lin & Anor v. SB Mehra* [1981] 1 MLJ 225, the substitution of the said administrators as defendants is effective as from the date the summons was originally filed and the action continued as though the substitution had been made from the beginning.

Encik Melvin Selvam, learned counsel for the defendant/appellant submitted that the plaintiff could only file his summons against the estate of the deceased defendant during the six months after the date on which the letters of administration were granted ie, six months from 21 June 1984. Since the plaintiff filed his summons on 7 December 1983 before the administration, the said summons is invalid as it could only be filed during the six months from 21 June 1984. According to him, s. 8(3)(b) of the Act expressly provides to the effect that the cause of action can be filed only after the deceased defendant's personal representatives have taken out representation and not before, and quoted *Airey v. Airey* [1958] 2 QB 300 and *Rinya Anak Kassi v. Wong Sie King* [1970] 2 MLJ 82 in support.

Learned counsel for the plaintiff, Encik VS Viswanathan, however, submitted that the plaintiff's action is within time. The plaintiff filed his cause of action on 7 December 1983 well before the time began to run against him, and by virtue of s. 8(3)(b) of the Act, the plaintiff's summons is therefore maintainable and not time-barred.

The sessions court judge gave judgment in favour of the plaintiff by finding that the defence of limition did not apply to the plaintiff's action and accordingly gave judgment on liability and quantum in the plaintiff's favour. This is what she said in her short but clear judgment at p. 9 of the appeal record:

> Seksyen 8(3)(b) Akta tersebut adalah jelas bahawa apa-apa tindakan hendaklah "... diambil tidak lewat dan enam bulan selepas wakil dirinya mengambil representasi." Dengan lain perkataan, sekiranya tindakan diambil lebih dari enam (6) bulan selepas wakil dirinya mengambil representasi maka, tindakan akan terhad masa. Walau bagaimanapun di dalam kes ini tuntutan telah difailkan pada 7 Disember 1983 iaitu sebelum representasi dikeluarkan dan sebelum tempoh enam (6) bulan bermula. Dengan demikian tuntutan plaintif adalah tidak terhad masa.

In my judgment, the Sessions Court judge is right. The plaintiff's action is not time-barred. The six months' period in s. 8(3)(b) of the Act has not begun to run against him and hence his action is valid in law. The terms of s. 8(3)(b) are clear. The section states that no proceedings of the present nature against the estate of a deceased person shall be maintainable unless they are taken not later than six months after the personal representative takes out administration. The period prescribed by the section is a period of limitation (see *Lee Lee Cheng (f) v. Seow Peng Kwang* [1960] 26 MLJ l). So long as the proceeding is brought against the estate of the deceased person not later than six months after the grant of the letters of administration, the proceeding is not time-barred. For the plaintiff's cause of action to be maintainable, his action against the deceased defendant must be filed before 21 December 1984, ie, six months after 21 June 1984, the date on which the letters of administration were granted. In the present case, the plaintiff filed the summons on 7 December 1983, even before the time started to run against him. Thus, the plaintiff's action under the circumstances is valid and maintainable against the estate of the deceased defendant. Filing of summons against the deceased estate need not be made only after the grant of the letters of administration. It can also be made before the grant of the administration. By virtue of O. 15 r. 6A(1) and (3) of the Rules of the High Court 1980, the plaintiff's cause of action, although commenced on 7 December 1983 after the deceased defendant had passed away (on 25 May 1983), may be brought and treated as having been commenced against the deceased defendant's estate whether or not a grant of letters of administration was made before its commencement.

The two cases cited *(Airey* and *Rinya)* by the counsel for the defendant are of no assistance in this case. The decisions in both cases are based on the interpretation of the Law Reform (Miscellaneous Provisions) Act 1934 (UK) which had been repealed. *Airey* is an English case and hence it is not binding on this court. Whereas in *Rinya* it was not in dispute that the action there was indeed commenced within six months of the grant of representation to the defendant.

As pointed out earlier, the period mentioned under s. 8(3)(b) is a period of limitation and therefore, it is to be treated accordingly. The word 'after' appearing in para. (b) of s. 8(3) should not be read in isolation or given excessive emphasis otherwise it would lead to confusion. Indeed, the relevant phrase in para. (b) of the section "... not later than six months after his personal representatives took out representation" should be read as such as a whole having regard to the whole provision of sub-s. 3 of s. 8. If that is done, whatever confusion seemingly appears in the construction will be disappeared.

In the event, I dismiss the appeal with costs, and the decision of the Sessions Court judge over the issue of limitation is hereby upheld.